IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1538 OF 2005

Vijendra Deepchanda Mittal ...Petitioner

Versus

Milind Vijaykumar Takte & Anr ...Respondents

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Mr. P.S. Dani, Advocate for Petitioner

Mr. V.B. Konde Deshmukh, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 1ST JULY, 2005

P. C.:-

1. Heard the learned advocate for the petitioner and the learned A.P.P. for the State.

2. The petitioner has prayed for quashing of process issued against him in Regular Criminal Case No.2 of 2003, which is pending in the Court of learned J.M.F.C. Nashik Road, Nashik. In the said case, process has been issued against the petitioner under Section 420, 468 and 471 of I.P.C.

3. It may be stated here that the petitioner had earlier preferred an application before the learned Magistrate for recalling of process. The said application came to be rejected. Being aggrieved by

the order of the learned Magistrate, the petitioner preferred revision before the Sessions Court. However, in view of the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal & Ors. 2004 (4) Mh.L.J. 274**, the petitioner has not pursued the said revision and has filed this petition before this Court. In view of the decision of the Supreme Court in the case of Adalat Prasad (supra), the Magistrate does not have power to recall the process, hence I am not inclined to interfere with the order of the Magistrate rejecting the application of the petitioner for recall of process.

4. However, For the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No.550 of 2005, it would be appropriate for the petitioner to pursue the revision which has been filed before the Sessions Court.

5. Liberty is granted to the petitioner to pursue the said revision before the concerned Sessions Court. The said revision shall be considered by the Sessions Court in respect of the order of the Magistrate issuing process against the petitioner and it shall not be considered in respect of the order of the Magistrate rejecting the application of the

petitioner for recalling of process. In order to enable the petitioner to pursue the revision which has already been filed by him before the Sessions Court, the trial Court shall not proceed with the trial for a period of three weeks from today.

6. The learned Sessions Judge shall dispose of the said revision on merits after hearing necessary parties.

7. Writ Petition is disposed of.

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